

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Appl. No.** : 09/835,237  
**Applicant** : Robert Van Kommer  
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**TC/AU** : 2655  
**Examiner** : Huyen X Vo

**Customer No.:** 00116  
**Docket No.** : P&TS-33226

Commissioner for Patents  
Alexandria, VA 22313-1450

**APPELLANT'S REPLY TO EXAMINER'S ANSWER**

Commissioner for Patents  
Washington D.C. 20231

Sir:

This is a reply to the Examiner's Answer in an ex parte appeal from the decision of the Examiner in the Final Rejection dated March 27, 2009 in the above-identified application, rejecting all claims in the application. The due date for filing this Reply is January 26, 2011.

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### **REAL PARTY IN INTEREST**

The application is assigned to Swisscom LTD, of Switzerland.

### **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

### **STATUS of CLAIMS**

Claims 1 through 5, 7 through 24, 26 through 28, and 30 through 64 are pending in the application. All claims have been finally rejected under 35 U.S.C. §103(a). The rejection of these claims is appealed. The claims are attached to the filed Brief as Appendix A.

### **STATUS of AMENDMENTS**

No amendment has been filed since the final rejection of March 27, 2009.

### **ARGUMENT**

I.A. In response to Appellant's argument that the Saylor and Kuhn references fail to teach the shared user-specific speech models that are updated during use for one service provider while benefiting other service providers (in section I.A. of the Brief), the Examiner "addresses" this issue by failing to discuss

the issue of using the updated models by ordering from other service providers. There is no incentive in Saylor or Kuhn (or any of the prior art) for such a feature, as dedicating the models to support only one provider is known to provide commercial advantages, and the Examiner fails to explain why the combination supposedly teaches the cited feature, which it clearly does not. The invention instead, novelly and non-obviously, recognizes a business model where *sharing* such models with a plurality of providers can be used advantageously, rather than the anti-competativeness shortcoming known in the art, where a third-party communications provider is providing the service. Even if the Examiner's arguments found on page 18-19 of his Answer are taken as true, this still fails to teach using the updated models to support ordering from a different provider than the one that led to the updated models. Accordingly, the Examiner has failed to overcome Appellant's arguments, and the claims are patentable over the references as argued in the Brief.

In response to the Appellant's argument that Figure 5 of Kuhn fails to teach updating a user-specific speech model (also found in Section I.A. of the brief), the Examiner argues that this figure applies to adapting a model to a new user (see page 19 of the Answer), but if true, that confirms the Appellant's argument, as the result is a new model directed at the new user, not an updated user-specific speech model. The model cannot be *user-specific* until it is adapted to the specific user,

and thus Figure 5 only shows the initial creation of the user-specific model, not its updating. The Examiner goes further to argue that the references teaches that the model is iterative, referring to col. 9, lines 58-62, but this is listed as an optional feature where it is not described when, or how, such adaptation occurs (it could occur only during the initial model development, for example), and the reference certainly does not teach that this is done during an ordering process, as required by the claim. Accordingly, the Examiner has failed to overcome Appellant's arguments regarding this figure, and the claims are patentable over the references as argued in the Brief.

I.B. In response to Appellant's argument that the Saylor reference fails to teach uploading an executable component (found in Section I.B. of the brief), the Examiner argues that a VPage can include an executable module, but fails to provide any evidence that this is so for the VPages of the reference (see pages 19-20 of Answer). In fact, a VPage can be nothing more than voice data provided for use in generating a voice response by an executable outside of the VPage. Although XML may indeed include executable content in some instances, it is not inherent that it do so, and the Examiner has failed to show that such is the case for the VPage used in the Saylor reference. Accordingly, the Examiner has yet again failed to make a prima facie case of obviousness for this feature.

I.C. Regarding Appellant’s argument that the combination of Saylor with Kuhn fails to teach the use of user-specific speech models to support a *plurality* of providers (found in Section I.C. of the brief), the Examiner has effectively failed to show any teaching of supporting a plurality of providers, as argued in the Brief, and he has actually ignored or misinterpreted this argument in his Answer, where he makes an argument about service providers uploading products and/or services to the server’s database (see page 20), a feature not found in the claims or argued in the Brief. Regardless, the Examiner has shown no such teaching and has failed to address this feature, and thus the Examiner has failed to make a *prima facie* case of obviousness regarding this limitation.

I.D. Regarding applicants arguments that the Examiner has failed to properly support a *prima facie* case of obviousness (found in Section I.D. of the brief), the Examiner argues that it would be obvious merely because the results of the combination were predictable, citing KSR (see page 21 of the Answer). The Examiner fails to fully read KSR, as the Court actually states that “a combination of *familiar* elements according to *known* methods is *likely* to be obvious when it *does no more than* yield predictable results” (see KSR 2007 U.S. LEXIS 4745, 33, emphasis added). This is clearly not the case for the rejections in this application, as the Examiner has not shown that the items are familiar to one skilled in the art, or that they do no more than yield predictable results. In fact, quite the opposite is

the case, as these features are not at all familiar to those skilled in the art and the results are not predictable, as the prior art was inclined against them. Thus, the Examiner has failed to make a *prima facie* case of obviousness for these rejections.

I.H. Regarding the Appellant's argument that the Examiner has ignored the feature of using a user-independent model for new users and user-dependent model for known users (found in Section I.H. of the brief), the Examiner argues that Kuhn teaches identifying the user as known or unknown, and adapting speaker independent models to the speech of the unknown user, citing col. 4, lines 15-24 (see page 21, last paragraph). However, the section actually states that "the speech models are trained *prior to* placing the system in service for use". Although there is discussion on the use of speaker independent models, the reference does not discuss the process of determining known and unknown users, and furthermore the reference's statement that the speech models are trained *prior to* placing the system in service for use can only mean that the speaker independent models of Kuhn are not actually used for any ordering process, but are just used as a starting point for forming user-dependent models during training, and prior to their actual "use". Thus, Kuhn fails to teach using independent models for unknown users and dependent models for known users in the manner specified by the claim.

I.K. Regarding the Appellant's argument that Saylor fails to teach a common speech recognition module comprising a common user profile database

including user preferences (found in Section I.K. of the brief), the Examiner cites col. 18, lines 1-10 (see page 22 of Answer), which merely teaches that a user can set preferences having to do with the delivery of content *to the user* via the VNAP system (the VPage is used to generate speech for the user to listen to—for “the delivery of content to users”—see line 12), and thus is *not* part of an *common speech recognition module*, which the claims make clear are responsible for content going *from* the user *to* the system (where the speech of the user is recognized and used to adapt the user-specific models). Thus, the cited section fails to overcome Appellant’s arguments.

I.L. Regarding the Appellant’s argument that the references fail to teach storing a plurality of user-specific speech and language models adapted to specific users for use by the common speech recognition module” such that “said one of said interactive voice response applications utilizes said retrieved user-specific speech and language model via said common speech recognition module for recognizing speech of the identified user during said ordering (found in Section I.L. of the brief) the Examiner argues that Saylor teaches a speech recognizer which *inherently* includes acoustic models and language models (see page 22 of Answer). But the concept of “inherency” requires that the Examiner provide sufficient evidence and or rationale to show inherency. MPEP §2112. The fact that a certain result or characteristic *may* occur or be present in the



prior art is *not sufficient* to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art) (emphasis added); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence `must make clear that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that it *would be so recognized by persons of ordinary skill*. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). See MPEP §2112.

However, the Examiner has merely alleged this inherency, without providing any evidence that it is so, and in fact, his own argument merely asserts that language models must include acoustic models, and that language models are well-known. But well-known is not the same as *necessarily present*, and thus the

Examiner has failed to show inherency. Furthermore, language models are a term of art that are not the equivalent to merely providing dynamic grammar, as discussed on page 45 of the Brief. Thus, the Examiner has failed to overcome Appellant's arguments regarding this matter.

### **CONCLUSION**

For the reasons stated in the Brief, the Appellant's claims represent a new, useful, and nonobvious system/method of providing a plurality of providers with the ability to *share* user-specific speech models supporting a plurality of users, with the models being updatable when a user interacts with any one of the providers and with the updates being used by *other* providers. The Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. §103(a) for the claims, in particular because the prior art cited by the examiner, even taken in combination, fails to teach any such *user-specific* speech models being *shared* by a *plurality* of providers, and furthermore the prior art fails to teach such models being further adapted when used for transactions with one provider, with the adaptations being used for transactions with another provider. The Examiner's arguments in his Answer, as discussed above, fail to overcome Appellant's arguments provided in the Brief. Consequently, the rejection of the claims for obviousness by the examiner is not supported. Accordingly Appellant respectfully

requests the Board of Patent Appeals and Interferences to reverse the rejection of claims 1, 30, 50, 52, 53, 55, 57, & 60-65 and return the case to the examiner for issuance of a notice of allowance.

If there are any additional fees resulting from this communication, please charge all uncovered fees to our Deposit Account No. 16-0820, our Order No. P&TS-33226.

Respectfully submitted,

Pearne & Gordon LLP

By:           / Robert F. Bodi /            
Robert F. Bodi, Reg. No. 48,540

1801 East 9<sup>th</sup> Street, Ste. 1200  
Cleveland, Ohio 44114-3108  
(216) 579-1700

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